

CITY OF AUSTIN ETHICS REVIEW COMMISSION

MARK WALTERS	§	
Complainant	§	
	§	Complaint No. 20150630
v.	§	(Amended)
	§	
AUSTIN COUNCIL MEMBER	§	
DON ZIMMERMAN	§	
RESPONDENT	§	

ORDER ON PRELIMINARY HEARING

I. PROCEDURAL HISTORY

On June 30, 2015, Mark Walters (“Complainant”) submitted to the Austin City Clerk an Amended Sworn Complaint (“the Amended Complaint”) against Council Member Don Zimmerman (“Respondent”). The City Clerk sent a copy of the Amended Complaint and a notice of filing to the City Attorney, the Ethics Review Commission (“the Commission”), the Complainant, and the Respondent.

On September 10, 2015, Commission Executive Staff Liaison and City of Austin Assistant City Attorney Cynthia Tom (“Tom”) issued a Second Revised Notice of Preliminary Hearing, setting a Preliminary Hearing of the Commission for September 28, 2015, and advising the Respondent and Complainant of procedures for the Preliminary Hearing.

II. FINDINGS OF FACT

- Respondent is an Austin City Council Member, District 6, and held that same position at all times relevant to the Amended Complaint.
- Complainant alleges that Respondent violated Sections 2-7-1(a) (Declaration of Policy) and 2-7-62(J) (Standards of Conduct), Austin City Code, on June 26, 2015, by allegedly posting certain statements to a social media website.

- Complainant attached to the Amended Complaint a printout of a webpage that included comments allegedly made by the Respondent.
- Complainant and Respondent were each afforded an opportunity to appear at the Preliminary Hearing in accordance with Chapter 2-7 of the City Code and the Rules of the Commission. Complainant appeared in person. Respondent's attorney appeared at the hearing, but the Respondent was not present.
- The Complainant addressed the Commission, and provided additional exhibits.
- The exhibit included with the complaint and the additional exhibits did not show that the Respondent used city resources to post the statements that form the basis of the complaint.

III. CONCLUSIONS OF LAW

- The September 28, 2015, meeting of the Commission and the Preliminary Hearing were properly noticed in accordance with Chapter 2-7 of the City Code, the Ethics and Financial Disclosure Ordinance (“Chapter 2-7”), and the Texas Open Meetings Act.
- The Commission has jurisdiction over complaints alleging violations of Chapter 2-2 of the City Code (The Austin Fair Campaign Chapter), Chapter 4-8 of the City Code (Regulation of Lobbyists), Article III, Section 8 of the City Charter, (Limits on Campaign Contributions and Expenditures), Chapter 2-7 of the City Code (Ethics and Financial Disclosure), and Section 2-1-24 of the City Code (Conflict of Interest and Recusal).

- The Amended Complaint was filed with the City Clerk, was sworn to by Complainant, and identifies the section of the City Code alleged to have been violated, as required by Section 2-7-41 of the City Code.
- The Amended Complaint alleges a violation under Section 2-7-1 of the City Code (Declaration of Policy) which sets forth aspirational standards for City Officials and Employees. The Amended Complaint specifically alleges a violation of Subsection 2-7-1(A), which provides:

It is the policy of the City that the proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for all City officials and employees is adopted.

- The Amended Complaint also alleges a violation under Section 2-7-62 of the City Code (Standards of Conduct), specifically Subsection 2-7-62(J), which provides:

No City official or employee shall use City facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public.
- Section 2-7-48 of the City Code (Sanctions) sets forth the various sections of the City Code and Charter for which a sanction may be assessed and provides, in relevant part:

(A) This section applies only to violations other than violations of Chapter 2-2 (Campaign Finance) and Article III, Section 8, of the City Charter (Limits on Campaign Contributions and Expenditures).

(B) If the Ethics Review Commission determines that a violation of Sections 2-7-62 (Standards of Conduct), 2-7-63 (Prohibition on Conflict of Interest), 2-7-64 (Disclosure of Conflict of Interest), and 2-7-65 (Substantial Interest of Relative) occurred, it shall proceed directly to determination of the appropriate sanction(s). A violation of Sections 2-7-62 (Standards of Conduct), 2-7-63 (Prohibition on Conflict of Interest), 2-7-64 (Disclosure of Conflict of Interest), and 2-7-65 (Substantial Interest of Relative) shall not be subject to criminal penalties under the City Code. The commission may receive additional testimony or statements before considering sanctions but is not required to do so. If the respondent acted in reliance upon a public written opinion of the city attorney, the commission shall consider that fact.

- There is no stated sanction provision relevant to Section 2-7-1 of the City Code.
- Under Section 2-7-44 of the City Code (“Section 2-7-44”), the issue to be considered by the Commission at a Preliminary Hearing is the existence of reasonable grounds to believe that a violation of a provision within the jurisdiction of the Commission has occurred.

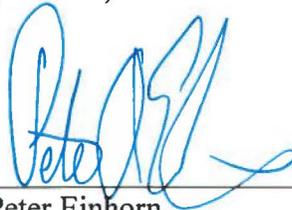
**IV. DETERMINATION OF
THE ETHICS REVIEW COMMISSION**

- The Commission determines that no reasonable grounds exist to believe that a violation of Section 2-7-1(A), Austin City Code, a provision within the jurisdiction of the Commission, has occurred as a result of the actions or omissions alleged in the Amended Complaint.
- A majority of the Commission did not determine that there are reasonable grounds to believe that a violation of Section 2-7-62(J), Austin City Code, has occurred.

**V. REFERRAL/NON-REFERRAL
TO FORMAL HEARING**

- The Commission will not set the Amended Complaint for a final hearing with respect to the alleged violations of Sections 2-7-1(A) and 2-7-62(J), Austin City Code.
- The Amended Complaint is DISMISSED.

ORDERED as of the 28th day of September, 2015.



Peter Einhorn
Vice-Chair, Ethics Review Commission